IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE SECOND DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT APPEAL NO : 2077 of 2002

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 28/10/2002 in WP NO : 25703 OF 2000 on the file of the High Court.)

Between:

K. Venkateswarlu, S/o K.Venkataratnam,

Aged about 68 years, Occ: Retd. Employee,

R/o 86-6-3/A, Ashoknagar, Kakinada, E.G.Dist.

..... APPELLANT

AND

The Andhra Bank,

5-9-11, Secretariat Road,

Saifabad, Hyderabad., rep. by its

Managing Director.

.....RESPONDENT

Counsel for the Appellant: MR. Josyula Bhaskara Rao,

Counsel for the Respondent: Mr. Nooty Rama Mohan Rao, Standing Counsel, Andhra Bank

The Court made the following :

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:: JUDGMENT ::

(Per Hon'ble Sri Justice G. Raghuram)

Aggrieved by the dismissal of W.P. No. 25703 of 2000, the writ petitioner has instituted this appeal. He is hereinafter referred to, for convenience, as the petitioner.

The petitioner joined the service of the respondent-Bank as a Clerk in 1960 and retired on superannuation on 31.8.1994 as an Officer. In 1995 there was a revision of the pay scales and Dearness Allowance with retrospective effect from 1.7.1993. As a consequence of such retrospective effect having been accorded, the petitioner, though retired from service, was also paid the arrears of the difference in the salary he actually drew while in service and the salary as revised by the retrospective revision of the pay scales, for the period 1.7.1993 till his retirement. On his retirement he was paid the gratuity.

It requires to be noticed that the gratuity entitlement of the petitioner is on the basis of the gratuity package engendered by the respondent-bank, being more favourable in monetary terms than the gratuity obligated under the provisions of the Payment of Gratuity Act 1972 (for short 'the Act'). The gratuity package of the respondent-bank was applicable in view of the provisions of Sec.4(5) of the Act.

On 23.6.1995 the Indian Bank Associations High Power Committee entered into an agreement with the association of Officers organisations, on a wide range of issues relating to the service conditions in the bank. Consequent on this agreement a circular dated 27.7.95 was issued by the respondent-bank operatinalising the terms

of the agreement. Clause-7 of the agreement reads as under:

" 7) Gratuity: As per the consensus reached, gratuity computed in terms of the Officers' Service Regulations to be now amended shall be recalculated and difference paid only to such eligible officer employees who cease to be in the bank's service on or after 1.11.1994. No arrears on account of gratuity shall be payable to officers who ceased to be in bank's service prior to 1.11.1994."

As a consequence, while the revision of the pay scales and DA benefits would accrue w.e.f. 1.7.1993, for the purpose of computation and revision of gratuity, only such of those officers/employees who had retired from service on or after 1.11.1994, would be entitled to consequent arrears on account of revised gratuity. The revision of gratuity benefit and arrears is not available to the officers like the petitioner, who retired prior to 1.11.1994.

Aggrieved and contending unequal treatment, the petitioner made a representation dated 20.8.1997 to the respondent-Bank claiming arrears of gratuity on the basis of pay revision brought into effect from 1.7.1993. By the letter of the respondent-bank dated 23.8.1997 the petitioner was informed that officers who had retired or resigned on or after 1.11.1994 are alone eligible for arrears of gratuity as per revised scales, though the revised salary was paid w.e.f. 1.7.1993 and since the petitioner had retired from service on 31.8.1994 he was not eligible for arrears of gratuity as per the revised scales.

Thereafter the petitioner appears to have made representations and continued to pursue such representations with the Andhra Bank Retired Employees Association. Eventually he field W.P. No. 25703 of 2000 on 21.12.2000, more than 5 years after the circular dated 27.7.1995 and more than 3 years after the date of the rejection letter (23.8.97).

The learned single Judge rejected the claim of the petitioner for the reason recorded, that limiting the benefit of arrears of gratuity to employees who had retired on or after 1.11.1994 does not fall foul of the equality injunctions u/Art. 14 of the Constitution. Therefore this appeal.

In response to the query whether the delay and latches on the part of the petitioner in approaching this court by way of the writ petition, disentitles him to the relief sought, learned counsel for the petitioner relies on the following decisions:

In ***H.D. Vora vs State of Maharashtra ()*** a citizen challenged a requisition of her flat

in 1951 and the continued deprivation since then, on various grounds including the invalidity of the order of requisition, contending that the order of requisition did not set out the public purpose for which it was requisitioned. In defence to the challenge, it was urged by the State that the writ petition itself was liable for rejection on the ground of inordinate delay and latches. This contention was negatived by the Supreme Court principally on the ground that though the order of requisition made initially could have been valid, the order of requisition being distinct from an order of acquisition, is self-limited in point of time and therefore the continued requisition of the flat was invalid. If the public purpose for which the premises are required is of a perennial or permanent character from the very inception, no order can be passed requisitioning of the premises and in such a case the order of requisition, if passed, would be a fraud upon the statute, for the Government would be requisitioning the premises when really speaking they want the premises for acquisition, the object of taking the premises being not transitory but permanent in character, held the Supreme Court. On that logical premise the Supreme Court did not countenance the contention that the commencement of the cause of action was from the initial date of requisition and rejected the objection of delay and latches in instituting the writ petition. This decision does not support the contention of the petitioner that a *lis* seeking remedy for violation of fundamental rights cannot ever be rejected on the ground of delay and latches.

In ***Ramchandra Shankar Deodhar vs State of Maharastra ()*** the validity of service rules altering the quota for promotees and direct recruits to the category of Deputy Collectors in Maharshtra State fell for consideration of the Supreme Court. Answering the objection as to the maintainability of the writ petition on the ground of latches and delay, the Supreme Court observed that a claim for enforcement of the fundamental right of equal opportunity itself being a fundamental right guaranteed u/Art. 32 of the Constitution, the Supreme Court was not easily persuaded to refuse the relief solely on the jejune ground of latches, delay or the like. In making this observation in Para-10 (reported in the SCC) the Supreme Court noticed earlier decisions in ***Tilokchand Motichand vs H.B.Munshi ()*** and ***R.N. Bose vs Union of India ()***. In view of the ratio and principles enunciated in *Tilokchand* and *Motichand* (supra) the principle is too well settled that even a claim of violation of fundamental rights could be lost if not pursued with due diligence and without latches and delay.

In the case on hand the petitioner had chosen to approach this court more than 3

years even after his claim for the benefit of gratuity arrears was rejected by the respondent-bank by its letter dated 23.8.1997 and in circumstances where the cause of action in fact had accrued on the issuance of the circular dated 27.7.1995, of which he was conscious as he had received the benefits of arrears of salary for the period during which he served upto 31.8.1994, on revision of the pay scales and DA with retrospective effect. Therefore the petitioner must be held to have approached this court without due diligence and with the degree of promptitude expected in a situation where monetary liability would impinge on the respondent-bank. If the petitioner had instituted a suit in a civil court of competent jurisdiction for the very same relief for which he had instituted the writ petition, it would have been barred on the point of limitation. In such circumstances in the considered view of this court no relief ought to have been granted to the petitioner.

On the above analysis we not inclined to adjudicate upon the merits of the petitioner's contentions as regards the judgment of the learned single Judge. The writ appeal is dismissed. No order as costs.

Date: 05.01.2004 ----------

Pvsn Justice J.Chelameswar

Justice G. Raghuram

.....REGISTRAR

To

1. The Managing Director

The Andhra Bank,

5-9-11, Secretariat Road,

Saifabad, Hyderabad.

2. 2 CD copies